THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 22.08.2007

\+ WP(C) No.1508/2007

SHRI RAJAN GUPTA ...Petitioner

- versus -

BANK OF INDIA AND ANOTHER ...Respondents

With

WP(C) No.1592/2007

ASHA SINGLA ...Petitioner

- versus -

BANK OF INDIA AND ANOTHER ...Respondents

And

WP(C) No.23014/2005

KAMAL GUPTA ...Petitioner

- versus -

BANK OF INDIA ...Respondent

Advocates who appeared in this case:

For the Petitioners : Mr A.K. Singla, Sr Advocate with Mr Pankaj Gupta and Ms Promila Dhar

For the Respondents : Ms Manjula Gandhi with Ms Neeru Sharma

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes

2. To be referred to the Reporter or not ? Yes

3. Whether the judgment should be reported in Digest ? Yes

BADAR DURREZ AHMED, J

1. These three petitions raise common issues and were, therefore, heard together and are being disposed of by this common judgment. The issue is with regard to the meaning of the word "borrower" as appearing in Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the said Act').

2. According to the petitioners, the word "borrower" as appearing in the said Section 13 (2) and as defined in Section 2 (f) of the said Act cannot extend and does not extend to include legal representatives of the original borrower. According to them, the expression relates only to the persons who took the loan or who were guarantors for the loan. It does not extend to their heirs or successors or legal representatives.

3. On the other hand, the learned counsel for the respondents contends that the expression "borrower" not only includes the persons who originally took the loan or the persons who originally stood guarantee, but also their legal representatives and heirs.

4. The present controversy is in connection with financial assistance to the extent of Rs 650 lacs taken by ROM Industries Limited from the respondent [Bank of India] for opening import letters of credit. One Smt. Parvati Devi, amongst others, stood guarantee for the said financial assistance. She also allegedly created an equitable mortgage in respect of her immovable property situated at 16/73, Punjabi Bagh, New Delhi. In October, 1996, the account of M/s ROM Industries Ltd was declared as a Non-Performing Asset (NPA) by the Bank of India. On 19.08.2000, the said Smt. Parvati Devi passed away. In November, 2003, the Bank of India filed a recovery application [OA 91/2003] in respect of the said loan before the Debts Recovery Tribunal. Although, Smt. Parvati Devi had already expired on the date on which the said application was filed, she was named as a party. Subsequently, on 04.12.2003, an amendment was sought to implead her legal representatives which include her son [Girdhari Lal Gupta] and daughter

[Asha Singla] amongst others. The said Girdhari Lal Gupta also passed away on 02.05.2004 and his legal representatives which include Kamal Gupta and Rajan Gupta were substituted. The said Kamal Gupta and Rajan Gupta are the sons of Late Shri Girdhari Lal Gupta. The present writ petitions have been filed by the said Asha Singla, Kamal Gupta and Rajan Gupta who are all legal representatives, directly or indirectly, of Late Smt. Parvati Devi. On 05.10.2005, the respondent [Bank of India] also issued notices under Section 13 (2) of the said Act against, *inter alia*, the petitioners in their capacity as legal heirs of Smt. Parvati Devi. Since these petitions are essentially directed against the issuance of the said notice dated 05.10.2005 and the invocation of provisions of Section 13 (2) of the said Act, it would be appropriate if the relevant portions of the said notice are set out:-

> "NOTICE U/S 13(2) OF THE SECUTITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002
>
> You are aware that the Bank had granted various credit facilities to the following firms / company for which Late Smt. Parvati Devi stood as guarantor. The details of the various credit facilities granted by the Bank and the amounts outstanding dues thereunder as on the date of notice are as under:-
>
> 1. **M/s Rom Industries Ltd**

Nature of Facility	Sanctioned Limit (Rs.)	Outstanding Dues (Rs.)
Import L/C	650 lacs	22,54,05,668.20

2. You are further aware that Late Smt. Parbati Devi had executed various Letters of Guarantee guaranteeing the due repayment of the amounts mentioned therein by the Principal Debtor and all interest, costs, charges and expenses due and accruing thereon.

3. You are further aware that Late Smt. Parbati Devi had undertaken liability under the various Letters of Guarantee for repayment of the aforesaid limits granted by the Bank to the aforesaid firm / company i.e. Principal Debtor and that she had secured the repayment of the aforesaid limits by creating in favour of the Bank an equitable mortgage of the property belonging to her situate at 16/73 Punjabi Bagh, New Delhi-110026.

4. As the aforesaid Principal Debtor had defaulted in repayment of their liabilities the bank has classified their dues in above said account as Non-Performing Asset in October 1996 in accordance with the directions / guidelines issued by the Reserve Bank of India.

5. We may inform you that in spite of repeated demands / requests for repayment of the amount due to the Bank, the aforesaid Principal Debtor have so far not paid the same. You, therefore, as the legal heirs of Late Smt. Parbati Devi have become liable to pay the aforesaid dues.

6. For the reasons stated above, we hereby give you notice U/S 13 (2) of the above noted Act and call upon you to discharge in full your liabilities to the Bank by paying to the Bank Rs.225405668.20 (contractual dues upon the date of notice) with interest @ 17.50% on C/D account No.10085 with

> quarterly rests within a period of 60 days from the date of notice, failing which we will entirely at your risks as to costs and consequences exercise all or any of the powers under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, against the secured assets mentioned above.
>
> xxxx xxxx xxxx xxxx xxxx"

The notice speaks of letters of guarantee executed by Late Smt. Parvati Devi as also the equitable mortgage created by her in respect of her property at 16/73, Punjabi Bagh, New Delhi as a security for repayment of the limits extended by the respondent. Significantly, the notice calls upon the petitioners, amongst others, in their capacity as legal heirs of Late Smt. Parvati Devi.

5. Before the relevant provisions of the said Act are examined, it would be necessary to also refer to two other documents. The first is the guarantee document in respect of the letters of credit. The said guarantee document was executed on 22.09.1995, jointly and severally, by, *inter alia*, Late Smt. Parvati Devi. Clauses (3) and (7) of the said guarantee are relevant and read as under:-

> "(3) This guarantee shall be a continuing security to you, and shall not be determined except at the expiration of three calendar months' written

> notice given to you of intention so to do by each of us or his legal representatives and in the event of the death of any one or more of us or any one or more of us coming under a disability, the liability of the survivor or survivors and the legal representatives of the person or persons so dying or coming under any disability and of the estate of any of us so dying or coming under disability shall continue under the expiration of three calendar months' notice in writing given to you of the intention of such survivors or survivor and legal representatives to determine the guarantee.
>
> xxxx xxxx xxxx xxxx xxxx
>
> (7) In the event of this guarantee being determined either by notice by us or the survivors or survivor of us and the legal representatives of any of us who shall have died or be under a disability or by demand in writing by the Bank, it shall be lawful for the Bank to continue the account with the Opener, notwithstanding such determination, and the liability of us or of our respective estates for the amount due from the Opener at the date when the guarantee is so determined shall remain, notwithstanding any subsequent payment into the account by or on behalf of the Opener. PROVIDED ALWAYS that the total amount which we shall be liable to pay under this guarantee shall not exceed Rs.6,50,00,000/-."

Clause (3) makes it clear that the guarantee was a continuing one and that it could not be determined by the guarantors except by giving a notice in writing by each of them, three calendar months prior to the date of termination. If a guarantor died, his / her legal representative would continue to be under a liability for the duration of the three-months

notice period, if such a notice had been given by the guarantor during his lifetime. Clause (7) indicates that the guarantee could only be determined either by notice by the guarantors or the survivors and the legal representatives of any of the guarantors who may have died or may be under a disability or by a demand being made by the bank in writing. Even where the guarantee is determined either by the guarantors or by the bank, the liability of the guarantors or of their respective estates for the amount due from the principal debtor at the date when the guarantee was determined, would remain. So, in terms of the guarantee itself, the death of Smt. Parvati Devi would not absolve her estate or her legal representatives who come upon her estate of the liability under the guarantee.

6. The second document of importance is the indemnity bond executed on 23.10.1996 by Smt. Parvati Devi. The said document carries the following recital:-

> "WHEREAS Smt. Parvati Devi has created equitable mortgage of her absolute property bearing No.16/73, Punjabi Bagh, ND with Bank of India, Industrial Finance Branch, New Delhi."

The indemnity bond was given by Smt. Parvati Devi as the sale deed dated 31.07.1968 in favour of the person from whom she had purchased

the property was not available with her. The sale deed dated 28.06.1971 in her favour was deposited with the bank for creating an equitable mortgage. This is apparent from the following extract from the said indemnity bond:-

> "Mrs Parbati Devi has deposited original sale deed dated 28th June, 1971 in favour of herself, a site plan of the property in question and latest Municipal Tax Receipts in favour of herself with the bank for the purpose of creating equitable mortgage with Bank of India for securing advance granted to M/s ROM Industries Limited by Bank of India."

7. Consequently, it could be safe to infer that Smt. Parvati Devi had a dual relationship with the Bank of India. She was one of the guarantors under the Letter of Guarantee and she was also a mortgagor under the equitable mortgage. With this background, the relevant provisions of the said Act may now be examined.

8. Section 13 (2) of the said Act reads as under:-

> "**13. Enforcement of security interest.—**
>
> (1) xxxx xxxx xxxx xxxx
>
> (2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by

> notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).
>
> xxxx xxxx xxxx xxxx"

By virtue of the above provision, a secured creditor has been empowered to require a "borrower", by a notice in writing, to discharge in full his liabilities to the secured creditor within 60 days from the date of notice, failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4) of Section 13 of the said Act. The question that arises is what is meant by the word "borrower" appearing in the above provision. Section 2 (f) defines "borrower" in the following manner:-

> "**2. Definitions.—**(1) In this Act, unless the context otherwise requires,—
>
> xxxx xxxx xxxx xxxx xxxx
>
> (f) "borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance;

xxxx xxxx xxxx xxxx xxxx"

9. It is apparent that the definition comprises of two parts. The first part follows the word "means" and the second part follows the words "and includes". Insofar as the first part is concerned, the word "borrower" has reference to:-

(1) any person who has been granted financial assistance by any bank or financial institution; or

(2) any person who has given any guarantee; or

(3) any person who has created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution.

The second part of the definition is an inclusive definition and brings within the ambit of the word "borrower", a person who becomes a borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interests of any bank or financial institution in relation to such financial assistance. This part of the definition, which is apparently based on the principle of subrogation, is not attracted in the present case and, therefore, does not

call for any further elaboration. As already mentioned above, the learned counsel for the petitioner had submitted that the expression "borrower" can only mean a person who has been granted financial assistance by any bank or financial institution or a person who has given any guarantee or created any mortgage or pledge as security for the said financial assistance. It was contended that it has reference only to the original person who took the loan or other financial assistance or the original person who gave a guarantee or created any mortgage or pledge as security for the said loan or financial assistance.

10. A further submission was made on behalf of the petitioners that Late Smt. Parvati Devi died on 19.08.2000. On that date, the said Act was not in force. It was submitted that the Act was preceded by an Ordinance which came into force on 22.08.2002. The Act itself came into effect on 17.12.2002. The Act was not retrospective and, therefore, since no notice could have been issued to Smt. Parvati Devi who originally stood guarantee and / or mortgaged the property in question, therefore, no notice could be issued to her legal heirs / legal representatives. This submission does not call for any separate treatment. The reason being that if the petitioners are not covered by the

expression 'borrower' as appearing in Section 13 (2) of the said Act then, no notice could have been issued to them under that provision. On the other hand, if they are covered under the expression 'borrower' then, it matters little whether the said Act had come into force prior or after the death of Smt. Parvati Devi. So, the real and only question is – are the petitioners "borrowers" as contemplated under Section 13 (2) of the said Act ?

11. Mr Singla, the learned counsel appearing on behalf of the petitioner, placed reliance on a decision of the Supreme Court in the case of ***P. Kasilingam and Others v. P.S.G. College of Technology and Others*****: 1995 Supp (2) SCC 348** for the purposes of explaining as to what is meant by a "means and includes" definition. The Supreme Court, while construing Rule 2 (b) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976, repelled the argument that the expression "means and includes" appearing in the said rule, indicated that the definition was inclusive in nature and also covered categories which are not expressly mentioned therein. The question which was before the Supreme Court was whether the expression "private college or colleges"

included professional and technical colleges which are not specifically mentioned in the definition. The supreme Court observed as under:-

> "A particular expression is often defined by the Legislature by using the word 'means' or the word 'includes'. Sometimes the words 'means and includes' are used. The use of the word 'means' indicates that "definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition". (See: *Gough v. Gough: 1891 (2) QB 665: 60 LJ QB 726; Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court: 1990 (3) SCC 682, 717: 1991 SCC (L&S) 71.*) The word 'includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words "means and includes", on the other hand, indicate "an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to those words or expressions". [See: *Dilworth v. Commissioner of Stamps: 1899 AC 99, 105-106: (1895-9) All ER Rep Ext 1576 (Lord Watson); Mahalakshmi Oil Mills v. State of A.P.: 1989 (1) SCC 164, 169: 1989 SCC (Tax) 56*] The use of the words "means and includes" in Rule 2 (b) would, therefore, suggest that the definition of 'college' is intended to be exhaustive and not extensive and would cover only the educational institutions falling in the categories specified in Rule 2 (b) and other educational institutions are not comprehended."

13. In the light of the aforesaid, it was submitted that the definition of "borrower" has to be construed as being exhaustive and not extensive. Therefore, the expression "borrower" specifically refers to a

person who has been granted financial assistance by a bank or financial institution or to a person who has given a guarantee or created any mortgage or pledge as security for the said financial assistance granted by a bank or a financial institution. But, as pointed out earlier, this case is not concerned with the second part of the definition following the words “and includes” which, in any event, only extends the definition to a “borrower” of a securitisation company or reconstruction company which acquires the rights or interests of any bank or financial institution in relation to such financial assistance. The Supreme Court decision in ***P. Kasilingam*** *(supra)* is not of much help to the petitioners. Since we are only concerned with the first part of the definition following the word 'means', it can be taken that the word 'borrower' has been exhaustively defined.

14. On behalf of the respondent, it was contended that the expression “borrower” as employed in Section 13 (2) of the said Act includes legal heirs / legal representatives of the original “borrower”. A reference was made to the definitions of “secured debt” and “secured interest” as given in Section 2 (ze) and Section 2 (zf). The same read as under:-

"**2. Definitions.—**(1) In this Act, unless the context otherwise requires,—

xxxx xxxx xxxx xxxx xxxx

(ze) "secured debt" means a debt which is secured by any security interest ;

(zf) "security interest" means right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in section 31 ;

xxxx xxxx xxxx xxxx xxxx "

15. It was contended that "secured debt" means a debt which is secured by any security interest. In turn, "security interest" means a right, title or interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in Section 31. Advancing the argument a little further, the learned counsel for the respondent submitted that security interest has reference to any right, title or interest upon a property and includes a mortgage. Late Smt. Parvati Devi had mortgaged her property. The petitioners are her heirs. Therefore, they have a right, title and interest in the mortgage and consequently, they would be covered under the expression "borrower".

The learned counsel also referred to Section 59A of the Transfer of Property Act, 1882 which reads as under:-

> "**59A. References to mortgagors and mortgagees to include persons deriving title from them.**—Unless otherwise expressly provided, references in this Chapter to mortgagors and mortgagees shall be deemed to include references to persons deriving title from them respectively."

The learned counsel for the respondent referred to the case of ***Samarendra Nath Sinha and Another v. Krishna Kumar Nag*: AIR 1967 SC 1440** wherein the Supreme Court observed in para 16 thereof that under Section 59A of the Transfer of Property Act, 1882 also, all persons who derive title from the mortgagor are included in the term "mortgagor" and are, therefore, entitled to redeem.

16. It was also contended by the learned counsel for the respondent that while interpreting a provision of a particular statute, the purpose of the statute must be kept in mind. The said Act had been enacted for the purposes of removing all hurdles faced by the banks and financial institutions for recovering their dues. Therefore, the expression "borrower" ought to be construed to include even the legal heirs / legal representatives of the original borrower. She also referred to the

decision of the Supreme Court in the case of ***M/s Associated Indem Mechanical (P) Ltd v. West Bengal S.S.I.D.C. Ltd & Others*****: AIR 2007 SC 788**, wherein the Supreme Court observed that it is well-settled that the word "include" is generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute and that when it is so used, those words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. The learned counsel for the respondent then referred to the decision of a single Judge of the Gujarat High Court in the case of ***Makboolhusen Razakmiya Maniyar & Another v. Bank of Baroda & Others*****: AIR 2006 Guj. 244**. She also referred to the decision of the Supreme Court in the case of ***National Insurance Co. Ltd. v. Laxmi Narain Dhut*****: AIR 2007 SC 1563** where the Supreme Court held that the provisions of a statute must be given purposive construction.

17. Now, the word "borrower" as used in Section 13 (2) of the said Act is further qualified by the words "who is under a liability to a

secured creditor under a security agreement". "Security agreement" has been defined in Section 2(*zb*) of the said Act as under:-

> "**2. Definitions.—**(1) In this Act, unless the context otherwise requires,—
>
> xxxx xxxx xxxx xxxx xxxx
>
> (*zb*) "security agreement" means an agreement, instrument or any other document or arrangement under which security interest is created in favour of the secured creditor including the creation of mortgage by deposit of title deeds with the secured creditor.
>
> xxxx xxxx xxxx xxxx xxxx"

Clearly, security agreement includes the creation of mortgage by deposit of title deeds with the secured creditor. Therefore, there is no difficulty in holding that had Smt. Parvati Devi been alive, she would fall within the expression "borrower, who is under a liability to a secured creditor under the security agreement". The question that has been posed in this petition is whether upon her death, her legal heirs would also be covered by the same expression ?

18. Section 2 (2) of the said Act reads as under:-

> "(2) Words and expressions used and not defined in this Act but defined in the Indian Contract Act, 1872 (9 of 1872) or the Transfer of Property Act, 1882 (4 of 1882) or the Companies Act, 1956 (1 of 1956) or the

> Securities and Exchange Board of India Act, 1992 (15 of 1992) shall have the same meanings respectively assigned to them in those Acts."

Section 2(*f*) speaks of mortgages. The expressions "mortgage", "mortgagor" and "mortgagee" etc. have been defined in Section 58 of the Transfer of Property Act, 1882. Accordingly, by virtue of Section 2(2) of the said Act, these words would have the same meanings under the said Act. Furthermore, Section 59A of the Transfer of Property Act, 1882, as pointed out by the learned counsel for the respondent, clearly stipulates that unless otherwise expressly provided, references to "mortgagors" and "mortgagees" shall be deemed to include references to persons deriving title from them respectively. Therefore, the meaning assigned to the word "mortgagor" under the Transfer of Property Act, 1882 refers to not only the "mortgagor", but includes references to persons deriving title from them. The same meaning has to be given under the said Act in view of the clear provisions of Section 2(2) thereof. The position, therefore, with regard to the equitable mortgage created by Smt. Parvati Devi is that her heirs / legal representatives would also be deemed to be mortgagors. That being the position, the petitioners would fall within the meaning of the word "borrower" as defined in Section 2 (*f*) of the said Act.

19. It has been pointed out earlier that Smt. Parvati Devi had a dual relationship with the Bank of India. She was a mortgagor under the said equitable mortgage and she was also one of the guarantors under the Letter of Guarantee. It has already been pointed out above that the Letter of Guarantee was a continuing guarantee and it contained specific clauses which extended liability to the original guarantors' legal heirs / representatives. The guarantee was terminable by the guarantors giving a notice in writing. Even the legal representatives of any of the guarantors who may have died would continue to be under the liability unless they also determined the guarantee by a notice in writing. In the facts and circumstances of the present case, no such notice in writing terminating the guarantee has been issued either by Late Smt. Parvati Devi or by any of the petitioners.

20. It is also important to note that the expressions “contract of guarantee”, “surety”, “principal debtor” and “creditor” have been defined in Section 126 of the Indian Contract Act, 1872 and to the extent such words are not defined in the said Act, the definition under the Indian Contract Act, 1872 shall be applicable in view of the provisions of Section 2 (2) of the said Act. The guarantee given by, *inter alia*, Late Smt. Parvati Devi was a continuing guarantee. In terms of Section 130

of the Indian Contract Act, 1872, a continuing guarantee may, at any time, be revoked by the surety as to future transactions by notice to the creditor. It has already been indicated above that no such revocation has been placed on record either at the instance of Late Smt. Paravati Devi or any of the petitioners. It is noticeable that the revocation mentioned in Section 130 of the Indian Contract Act, 1872 operates only prospectively, i.e., with regard to the future transactions and does not absolve the guarantor (surety) from any liability in respect of past transactions. Section 131 of the Indian Contract Act, 1872 is of material significance inasmuch as it deals with the revocation of a continuing guarantee by virtue of the surety's death. The said section provides that the death of the surety operates, in the absence of any contract to the contrary, as revocation of a continuing guarantee, so far as regards future transactions. Under the normal conditions, the death of the surety would by itself operate as a revocation of a continuing guarantee but, if there is any contract to the contrary, then it would not so operate. In the present case, there is a contract to the contrary inasmuch as clauses (3) and (7) of the Letter of Guarantee specifically stipulate that the guarantee shall not be determined unless and until the same is revoked by a notice in writing either by the original guarantor or his / her legal representative.

Therefore, the death of Smt. Parvati Devi by itself would not amount to a revocation of the guarantee in question. In any event, Section 131 makes it clear that the death of a surety would operate as a revocation only as regards future transactions. The liability in respect of past transactions would remain. In view of the foregoing discussion, it is absolutely clear that the petitioners would be covered under the expression "borrower" as appearing in Section 13 (2) of the said Act.

21. Before parting with this case, I would also like to point out that the definition section begins with the expression "in this Act, *unless the context otherwise requires*". So, the word "borrower" as defined in Section 2(*f*) of the said Act is not an absolute definition and if the context otherwise requires, then the said word would have to take colour accordingly. In ***Youaraj Rai & Others v. Chander Bahadur Karki*****: 2007 (1) SCC 770**, the Supreme Court held as under:-

> "Moreover the opening words of Section 2 are "unless the context otherwise requires". Hence, while construing, interpreting and applying the definition clause, the court has to keep in view the legislative mandate and intent and to consider whether the context requires otherwise."

In ***Ramesh Mehta v. Sanwal Chand Singhvi and Others*****: 2004 (5) SCC 409**, S.B. Sinha, J, in his concurring opinion observed as under:-

> "26. The interpretation clause in the said Act is prefaced with the expression "unless otherwise requires by the context".
>
> 27. A definition is not to be read in isolation. It must be read in the context of the phrase which would define it. It should not be vague or ambiguous. The definition of words must be given a meaningful application; where the context makes the definition given in the interpretation clause inapplicable, the same meaning cannot be assigned."

In ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others:*** **1998 (8) SCC 1**, the Supreme Court held as under:-

> "28. Now the principle is that all statutory definitions have to be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or context. That is why all definitions in statutes generally begin with the qualifying words, similar to the words used in the present case, namely 'unless there is anything repugnant in the subject or context'. Thus there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word had been used and that will be giving effect to the opening sentence in the definition section, namely 'unless there is anything repugnant in the subject or context'. In view of this qualification, the Court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under those circumstance". (See : Vanguard Fire and

General Insurance Co. Ltd. Madras v. Fraser & Ross:
AIR 1960 SC 971: 1960 (3) SCR 857)."

These decisions make it clear that since the definitions contained in Section 2 of the said Act are prefaced by the expression "unless the context otherwise requires", the definitions are not absolute definitions, but can have a different meaning depending on the context. Although in the present case, the petitioners, as indicated above, fall within the definition of "borrower" under Section 2(*f*) of the said Act itself, even if they strictly did not, they would be covered in the contextual and purposive sense.

22. For the foregoing reasons, it cannot be said that the action initiated under the said Act in respect of the petitioners is without jurisdiction.

The writ petitions are dismissed. No costs.

BADAR DURREZ AHMED
(JUDGE)

August 22, 2007
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